



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2010

Ms. Sheri Bryce Dye  
Assistant Criminal District Attorney  
Bexar County  
300 Dolorosa, Fourth Floor  
San Antonio, Texas 78205

OR2010-14162

Dear Ms. Dye:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393828.

The Bexar County Sheriff's Office (the "sheriff") received a request for 1) a copy of the calibration of radar used on a specified date to clock a named individual, 2) the radar's serial number, and 3) any other pertinent information pertaining to the radar, including frequent repairs, problems, and how frequently the radar is calibrated. You claim that the submitted information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>1</sup>

Initially, we note you have submitted only a single document containing serial numbers for the radar device at issue. You have not submitted any of the requested calibration information for our review; therefore, to the extent the sheriff maintained any information responsive to this portion of the request at the time the request was received, we presume it

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

has been released. If not, the sheriff must do so at this time. *See* Gov't Code §§ 552.301, .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to the requested information, it must release the information as soon as possible). Additionally, you state the sheriff "has no information responsive" to the request for information documenting repairs, problems, and how frequently the radar is calibrated, because responding to this portion of the request "would require answering questions or conducting research[,] which the [Act] does not require a governmental body to do." We agree the Act does not require a governmental body to answer general questions, perform legal research, or create new information in response to a request for information. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). However, we note simply responding to a request for information documenting repairs, problems, and the number of times the radar device was calibrated does not involve answering questions or performing research. Therefore, we conclude that to the extent the sheriff maintained any such information at the time the request was received, the sheriff must release it as well. *See* Gov't Code §§ 552.301(e)(1)(D), .302.

You raise section 552.108 of the Government Code for the submitted information. Section 552.108 provides in relevant part the following:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in a conviction or deferred adjudication[.]

*Id.* § 552.108(a)(1), (a)(2). We note that the protections offered by subsections 552.108(a)(1) and 552.108(a)(2) of the Government Code are, generally, mutually exclusive. Section 552.108(a)(1) generally applies to information that pertains to criminal investigations or prosecutions that are currently pending, while section 552.108(a)(2) protects law enforcement records that pertain to criminal investigations and prosecutions that have concluded in final results other than criminal convictions or deferred adjudication. A governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You state the submitted information pertains to an open and pending criminal case and state its release would interfere with the investigation or prosecution of that case. Based on your representation and our review, we conclude that section 552.108(a)(1) is applicable to

submitted information and that the release of the this information would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Accordingly, the sheriff may withhold the submitted information pursuant to section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



James McGuire  
Assistant Attorney General  
Open Records Division

JM/dls

Ref: ID# 393828

Enc. Submitted documents

c: Requestor  
(w/o enclosures)